

AMENDED IN SENATE MAY 29, 2013

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE MAY 15, 2013

AMENDED IN SENATE MAY 7, 2013

AMENDED IN SENATE APRIL 23, 2013

AMENDED IN SENATE APRIL 15, 2013

SENATE BILL

No. 777

Introduced by Senator Calderon

February 22, 2013

An act to amend Sections 12556 and 12726 of, to add Sections 12599.5 and 12635.5 to, and to add Chapter 3.5 (commencing with Section 12559) to Part 2 of Division 11 of, the Health and Safety Code, and to amend Section 15301 of the Vehicle Code, relating to public safety, ~~and making an appropriation therefor~~ *safety*.

LEGISLATIVE COUNSEL'S DIGEST

SB 777, as amended, Calderon. Public safety: fireworks.

Existing law authorizes the retail sale of safe and sane fireworks from June 28 to July 6, annually, pursuant to a license issued by the State Fire Marshal, unless otherwise prohibited or regulated by law or ordinance. Existing law requires various entities, including the State Fire Marshal, to seize certain prohibited fireworks. Existing law requires an authority that seizes fireworks to notify the State Fire Marshal of the seizure and provide specified information. Existing law requires the State Fire Marshal to dispose of the fireworks and requires dangerous fireworks to be disposed of according to specified procedures. Existing

law requires the State Fire Marshal to acquire and use statewide mobile dangerous fireworks destruction units to collect and destroy dangerous fireworks from local and state agencies.

This bill would require the State Fire Marshal, by January 1, 2015, to establish and have operational regional collection centers for the purpose of receiving seized safe and sane and federally approved fireworks. The bill would authorize the State Fire Marshal to permit a state licensed fireworks importer and exporter or wholesaler to purchase any fireworks the State Fire Marshal, the Department of Toxic Substances Control, and a recognized 3rd-party testing entity, as defined, deem to be commercially viable, from the State Fire Marshal. ~~The bill would require revenue generated from the sale of fireworks seized by a local authority to be allocated by the State Fire Marshal to the seizing local authority pursuant to an agreement, as provided, thereby making an appropriation. The bill would require any revenue received from the sale to belong to the seizing local authority and would authorize the State Fire Marshal to enter into a revenue sharing agreement with that local authority, as provided.~~ The bill would require the fireworks stored at the regional collection facility to be subject to certain requirements, including that they be stored for a period of not more than 90 days. The bill would require the Department of Toxic Substances Control to develop and publish guidelines for the implementation of these provisions, as provided.

This bill would authorize, beginning January 1, 2015, the sale of certified safe and sane fireworks from 9 a.m. on December 26 to 11:59 p.m. on January 1 of the following year pursuant to a license issued by the State Fire Marshal, if authorized by a charter city, city, county, fire protection district, or city and county ordinance or resolution that may also restrict the hours of use of those fireworks. Since a violation of this provision or other existing related provisions in connection with the sale of those fireworks would be a misdemeanor, the bill would impose a state-mandated local program by creating new crimes.

The bill would also authorize a charter city, city, county, fire protection district, or city and county that adopts an ordinance or resolution authorizing the sale of safe and sane fireworks to require each applicant receiving a permit to pay a fee to the charter city, city, county, fire protection district, or city and county of a pro rata portion of the actual and reasonable costs incurred by the charter city, city, county, fire protection district, or city and county for, among other things, processing and issuing fireworks permits, inspection of fireworks

stands, public awareness and education campaigns regarding the safe and responsible use of safe and sane fireworks, and related fire operation and suppression efforts, as specified. The bill would specify that the pro rata portion of those costs shall be based on a percentage of the permittee's sales and use tax return for the applicable permit period, not to exceed 7% of the gross sales of the fireworks sold in the charter city, city, county, fire protection district, or city and county, except that a cost recovery ordinance or resolution in effect on or before January 1, 2015, would be authorized to supersede that provision.

Existing law provides that if dangerous fireworks are seized pursuant to a local ordinance that provides for administrative fines or penalties and these fines or penalties are collected, the local government entity collecting the fines or penalties shall forward 65% of the collected moneys to the Controller for deposit in the State Fire Marshal Fireworks Enforcement and Disposal Fund.

This bill would delete this provision.

The bill would require, not later than January 1, 2015, the State Fire Marshal to collect and analyze data relating to fires, damages, seizures, arrests, administrative citations, and fireworks disposal issues caused by the sale and use of both dangerous illegal fireworks and safe and sane fireworks, as provided.

Existing law requires the Department of Motor Vehicles to suspend the commercial license of a person transporting dangerous fireworks, as specified.

This bill would clarify that those provisions do not apply to a person with a valid license under the State Fireworks Law, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$ -majority. Appropriation: ~~yes~~-no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12556 of the Health and Safety Code is
- 2 amended to read:
- 3 12556. (a) In addition to the obligations described in Section
- 4 13110.5, on or before July 1, 2008, the State Fire Marshal shall

1 identify and evaluate methods to capture more detailed data relating
2 to fires, damages, and injuries caused by both dangerous fireworks
3 and safe and sane fireworks. These evaluation methods shall
4 include a cost analysis related to capturing and reporting the data
5 and shall meet or exceed the specificity, detail, and reliability of
6 the data captured under the former California Fire Incident
7 Reporting System (CFIRS). The State Fire Marshal shall furnish
8 a copy of these evaluation methods to any interested person upon
9 request.

10 (b) Not later than January 1, 2015, the State Fire Marshal shall
11 collect and analyze data relating to fires, damages, seizures, arrests,
12 administrative citations, and fireworks disposal issues caused by
13 the sale and use of both dangerous illegal fireworks and safe and
14 sane fireworks. The State Fire Marshal shall collect data pursuant
15 to a methodology developed in consultation with the State Fire
16 Marshal's General Fireworks Advisory Committee, which consists
17 of representatives from local fire service and law enforcement
18 agencies and the fireworks industry.

19 SEC. 2. Chapter 3.5 (commencing with Section 12559) is added
20 to Part 2 of Division 11 of the Health and Safety Code, to read:

21
22 CHAPTER 3.5. FIREWORKS SELL-BACK PROGRAM
23

24 12559. (a) By January 1, 2015, the State Fire Marshal shall
25 establish and have operational regional collection centers for
26 purposes of receiving safe and sane fireworks and federally
27 approved consumer fireworks seized by local authorities.

28 (b) The regional collection centers shall be located throughout
29 the state in an amount and in locations determined by the State
30 Fire Marshal.

31 12559.1. (a) Notwithstanding Section 12723, and upon
32 compliance with Section 12726, a local authority or the State Fire
33 Marshal may transfer seized safe and sane fireworks and federally
34 approved fireworks to a regional collection center. *Any fireworks*
35 *transferred pursuant to this subdivision shall remain under the*
36 *ownership of the seizing local authority.*

37 (b) Safe and sane or federally approved fireworks transferred
38 to a regional collection center shall be deemed "hazardous material"
39 until the State Fire Marshal, Department of Toxic Substances

1 Control, and a recognized third-party testing entity make the
2 determination pursuant to subdivision (c).

3 (c) (1) The State Fire Marshal is authorized to permit a
4 recognized third-party testing entity to enter the regional collection
5 center for purposes of making a determination with the State Fire
6 Marshal and the Department of Toxic Substances Control as to
7 whether any seized fireworks are either commercially viable or
8 hazardous waste.

9 (2) Any firework deemed commercially viable may be
10 repackaged by the State Fire Marshal or the State Fire Marshal's
11 designee, including, but not limited to, a state licensed fireworks
12 importer and exporter, a wholesaler purchasing the product
13 pursuant to subdivision (d), the recognized third-party testing
14 authority, or a licensed hazardous materials or hazardous waste
15 hauler.

16 (3) Any product deemed not commercially viable by the State
17 Fire Marshal, the Department of Toxic Substances Control, and
18 the third-party testing authority shall be removed from the regional
19 collection center by the State Fire Marshal or the State Fire
20 Marshal's designee and transported and disposed of within 72
21 hours of the determination in accordance with all federal and state
22 hazardous waste laws and regulations.

23 (d) (1) The State Fire Marshal shall authorize a state licensed
24 fireworks importer and exporter or wholesaler to purchase any
25 fireworks deemed to be commercially viable pursuant to
26 subdivision (c) from the State Fire Marshal. *Revenue received from*
27 *the sale shall belong to the seizing local authority.*

28 (2) The State Fire Marshal may enter into an agreement with a
29 local authority for purposes of ~~allocating~~ *sharing* revenue from
30 the sale of fireworks pursuant to paragraph (1). ~~Notwithstanding~~
31 ~~Section 12635, revenue generated from the sale of the safe and~~
32 ~~safe or federally approved fireworks seized by a local authority~~
33 ~~shall be allocated by the State Fire Marshal to the seizing local~~
34 ~~authority pursuant to the agreement. The State Fire Marshal~~ *The*
35 *agreement shall allocate no less than 65 percent of the revenues*
36 *to that local authority with the balance going to the state.*

37 (e) For purposes of this section, "recognized third-party testing
38 entity" means an independent third-party testing entity recognized
39 by the federal Consumer Product Safety Commission as an
40 acceptable testing entity for consumer fireworks.

(f) Upon the purchase of fireworks, pursuant to this chapter, a state-licensed fireworks importer and exporter or wholesaler shall accept full liability for any damage done by the fireworks and the State of California shall be indemnified.

12559.2. Any fireworks stored at a regional collection center shall be subject to the requirements of Article 8 (commencing with Section 989) of Chapter 6 of Title 19 of the California Code of Regulations and to the requirements of the National Fire Protection Association (NFPA) 1124: Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles of 2013, and may be stored for a period not to exceed 90 days. The regional collection centers shall not be considered a storage facility for purposes of subdivision (b) of Section 25123.3.

12559.3. (a) The State Fire Marshal and the Department of Toxic Substances Control shall train local fire and law enforcement personnel on the requirements of this chapter.

(b) The State Fire Marshal shall, in consultation with relevant state and local public agencies, the fireworks industry, and other relevant stakeholders, develop, publish, and provide necessary guidance and training to local agencies that seize, collect, transport, store, and treat seized fireworks. This training and education may include, but is not limited to, the following specific areas:

(1) Standards for the transportation, storage, and handling of fireworks and pyrotechnic articles in accordance with Chapter 6 (commencing with Section 975) of Division 1 of Title 19 of the California Code of Regulations and the National Fire Protection Association (NFPA) 1124: Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles of 2013.

(2) Recognition of explosive materials and isolation procedures in accordance with Chapter 10 (commencing with Section 1550) of Division 1 of Title 19 of the California Code of Regulations and the National Fire Protection Association (NFPA) 495: Explosive Materials Code of 2013.

(3) Recognition of commercial, consumer, and illegal fireworks in accordance with Chapter 6 (commencing with Section 975) of Division 1 of Title 19 of the California Code of Regulations and the National Fire Protection Association (NFPA) 1124: Code for

1 the Manufacture, Transportation, Storage, and Retail Sales of
2 Fireworks and Pyrotechnic Articles of 2013.

3 12559.4. The Department of Toxic Substances Control shall
4 develop and publish guidelines for the implementation of this
5 chapter that includes, but is not limited to, the following specific
6 areas:

7 (a) Standards for the proper handling, transport, and storage of
8 fireworks that are hazardous materials for the purposes of this
9 chapter.

10 (b) Standards for the proper handling, transport, and disposal
11 of fireworks that are hazardous waste.

12 (c) A determination of the type of facility that qualifies as a
13 regional collection center.

14 (d) A definition of “commercially viable” for the purposes of
15 this chapter that ensures that fireworks that should be disposed of
16 as waste are not resold.

17 SEC. 3. Section 12599.5 is added to the Health and Safety
18 Code, to read:

19 12599.5. (a) Notwithstanding Sections 12599 and 12672, the
20 State Fire Marshal shall issue separate one-time retail licenses
21 pursuant to this section that shall authorize the retail sale of safe
22 and sane fireworks within this state only from 9 a.m. on December
23 26 to 11:59 p.m. on January 1 of the following year, inclusive. A
24 license issued pursuant to this section shall be valid for only one
25 seven-day period and shall expire at the end of the period for which
26 it is valid. All fireworks sold pursuant to a license issued pursuant
27 to this section shall have been certified as safe and sane by the
28 State Fire Marshal on or before June 15 of the year in which the
29 validity of the license commences. No other license issued pursuant
30 to this chapter shall authorize the sale of fireworks during that
31 period.

32 (b) A retail license shall not be issued for the license period
33 authorized by this section unless the charter city, city, county, fire
34 district, or city and county having jurisdiction over the fixed
35 location where the fireworks would be sold adopts an ordinance
36 or resolution allowing that sale, and the application for that license
37 is received by the State Fire Marshal on or before December 15
38 of the year in which the validity of the license is to commence.
39 The ordinance or resolution authorizing the sale of those fireworks
40 may limit the period of use of those fireworks to specified days

1 and hours within the period during which the sale is authorized by
2 this section.

3 (c) This section shall become operative on January 1, 2015.

4 SEC. 4. Section 12635.5 is added to the Health and Safety
5 Code, to read:

6 12635.5. (a) A charter city, city, county, fire protection district,
7 or city and county that adopts an ordinance or resolution pursuant
8 to Section 12599 or 12599.5 may, through adoption of an ordinance
9 or resolution by the governing body, require each applicant
10 receiving a permit to pay a fee to the charter city, city, county, fire
11 district, or city and county of a pro rata portion of the actual and
12 reasonable costs the charter city, city, county, fire protection
13 district, or city and county incurs that is related to any of the
14 following:

15 (1) Processing and issuing permits.

16 (2) Inspection of fireworks stands.

17 (3) Public education and awareness campaigns regarding the
18 safe and responsible use of safe and sane fireworks, and the dangers
19 and risks posed by the use of illegal fireworks.

20 (4) Enforcing the provisions of the code of the charter city, city,
21 county, fire protection district, or city and county with respect to
22 the sale and use of safe and sane fireworks, including extra
23 personnel time and cleanup of the fireworks trash and debris. "Extra
24 personnel time" means employee or contracted employee time that
25 the charter city, city, county, fire protection district, or city and
26 county would not otherwise incur but for the sale and use of safe
27 and sane fireworks.

28 (5) Fire operation and suppression efforts that are directly related
29 to safe and sane fireworks.

30 (b) The pro rata share of the costs shall be specified in the
31 ordinance or resolution and calculated using gross sales as shown
32 on each permittee's sales and use tax return for the applicable
33 period. The pro rata share of costs shall not exceed 7 percent of
34 the gross sales of the fireworks sold in the charter city, city, county,
35 fire protection district, or city and county during the applicable
36 period. A cost recovery ordinance or resolution in effect on or
37 before January 1, 2015, may supersede this subdivision.

38 SEC. 5. Section 12726 of the Health and Safety Code is
39 amended to read:

1 12726. (a) The dangerous fireworks seized pursuant to this
2 part shall be disposed of by the State Fire Marshal in the manner
3 prescribed by the State Fire Marshal at any time after the final
4 determination of proceedings under Section 12724, or upon final
5 termination of proceedings under Section 12593, whichever is
6 later. If no proceedings are commenced pursuant to Section 12724,
7 the State Fire Marshal may dispose of the fireworks after all of the
8 following requirements are satisfied:

9 (1) A random sampling of the dangerous fireworks has been
10 taken, as defined by regulations adopted by the State Fire Marshal
11 pursuant to Section 12552.

12 (2) The analysis of the random sampling has been completed.

13 (3) Photographs have been taken of the dangerous fireworks to
14 be destroyed.

15 (4) The State Fire Marshal has given written approval for the
16 destruction of the dangerous fireworks. This approval shall specify
17 the total weight of the dangerous fireworks seized, the total weight
18 of the dangerous fireworks to be destroyed, and the total weight
19 of the dangerous fireworks not to be destroyed.

20 (b) To carry out the purposes of this section, the State Fire
21 Marshal shall acquire and use statewide mobile dangerous
22 fireworks destruction units to collect and destroy seized dangerous
23 fireworks from local and state agencies.

24 SEC. 6. Section 15301 of the Vehicle Code is amended to read:

25 15301. (a) The Department of Motor Vehicles, in conjunction
26 with the State Fire Marshal, shall develop regulations and
27 procedures to temporarily suspend the commercial motor vehicle
28 license of a person who is operating a commercial motor vehicle
29 while transporting dangerous fireworks having a gross weight of
30 10,000 pounds or more.

31 (b) A driver of a commercial motor vehicle shall not operate a
32 commercial motor vehicle for three years if the driver is convicted
33 of transporting dangerous fireworks having a gross weight of
34 10,000 pounds or more.

35 (c) This section shall not apply to a person who holds and is
36 operating within the scope of a valid license as described in Section
37 12516 of the Health and Safety Code or valid permit as described
38 in Section 12522 of the Health and Safety Code.

39 SEC. 7. The provisions of this act are severable. If any
40 provision of this act or its application is held invalid pursuant to

1 the federal Resource Conservation and Recovery Act, that
2 invalidity shall not affect other provisions or applications that can
3 be given effect without the invalid provision or application.

4 SEC. 8. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

O